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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,120	12/14/2000	Francine Joly	GEI-082	2156

7590 08/25/2003

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EXAMINER

FUBARA, BLESSING M

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 08/25/2003

LS

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,120

Applicant(s)

JOLY ET AL.

Examiner

Blessing M. Fubara

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40,44-54 and 56-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40,44-54 and 56-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Examiner acknowledges receipt of request for continued examination under 37 CFR

1.114 and preliminary amendment G filed 04/07/03, supplemental amendment H filed 05/07/03 and supplemental response filed 06/04/03. Claims 40, 44-54 and 56-58 are pending.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on 04/07/03 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

3. Claims 51-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The recitation that the generic claim 40 contains additional ingredients in claims 51-54 lack antecedence because claim 40 consists essentially of. There is insufficient antecedent basis for additional ingredients in the claims.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 40, 44, 45, 47-54 and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 404126057.

JP 404126057 discloses a composition comprising seawater, adequate amounts of water, saccharides, a fruit juice, proteins, an amino acid, vitamins, vegetable extracts, carbonic acid, a flavoring agent, a sweetener, lactic acid and lactic acid bacteria, honey, nicotinic acid, sodium glutamate, a sour agent, a thickener, a colorant, a stabilizer, an emulsifying agent, fiber, fats, ash, arginine, caffeine, preservative and caramel (abstract). Future intended use does not patentably distinguish a composition claim over the prior art.

Amino acids including the basic amino acids have amino groups/moieties. Also, salts of amino acids are obvious variants of amino acids. The abstract of JP 404126057 is silent on amount of seawater and amino acid. In the absence of unexpected results the recited amounts are not inventive over the prior art. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the teachings of JP 404126057. One of ordinary skill in the art would have been motivated to prepare the composition of JP 404126057.

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One having ordinary skill in the art would know routine ways of optimizing the amounts of sea water and amino acids in the composition that would generate the desired effect.

7. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 404126057 in view of N'Guyen et al. (US 5,352,695).

JP 404126057 teaches the composition of the instant claims except that the JP reference does not teach arginine pidolate, which is a derivative of the amino acid arginine. However, N'Guyen discloses arginine pidolate as an antioxidant (column 1, line 11). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the composition of the JP reference where the composition contains a stabilizer. One having ordinary skill in the art would have been motivated to use arginine amino acid derivative as an antioxidant with the expectation that would stabilize the composition.

The claims are directed to a composition comprising seawater and basic amino acid or its salts or esters. Future intended use is not critical in composition claims. The prior art composition is a soft drink and that drink may be a health drink as previously admitted by applicants. The treatment method is a mere administration of a composition to a subject and a soft drink is also administered when it is taken.

The Declaration:

The declaration is not persuasive because the declarant provided no data comparing the invention of the prior art and the instant invention. Specifically, applicants claim 3-95% by weight of seawater, which appears to be a lot of salt water. Secondly, the declaration discusses brine instead of seawater.

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8. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicants' cooperation is requested in correcting any errors of which applicants may become aware in the specification including the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Blessing M. Fubara whose telephone number is 703-308-8374. The examiner can normally be reached on 7 a.m. to 3:30 p.m. (Monday to Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Blessing Fubara
Patent Examiner
Tech. Center 1600

